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Las Pilitas Resources, LLC

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Board of Supervisors
San Luis Obispo County

Board of Supervisors
San Luis Obispo County
1055 Monterey Street, 4th Floor
San Luis Obispo, CA 93408

April 16, 2015

Dear Supervisors:

In advance of the upcoming hearing on the Las Pilitas Resources Quarry project on May 12, 2015, we wanted to take a moment to correct some of the misconceptions about the project that unfortunately pervaded at the Planning Commission hearings. We feel strongly that once you understand the true facts of this project, you will see that many of the "Findings" by staff are contradictory to and inconsistent with the EIR's conclusions and other facts in the record. In actuality, there are many reasons to approve the project. Enclosed for your consideration is a detailed response to the denial findings that we believe provides the Board with the reasons why the denial cannot be upheld on appeal. We provided this response to your Planning Director last week and encourage you to review it prior to the appeal hearing. However, because that is a lengthy document, we have summarized the main points for you as follows:

Staff Findings 1(a), 2(b) and 4(a) state in various ways that the project is inconsistent with certain Conservation and Open Space Element (COSE) visual goals. Staff feels the State Route 58 "scenic corridor" would be impacted. Staff also finds the project incompatible with the community of Santa Margarita for health and safety reasons.

Fact: First and foremost, there is no requirement in the findings for a Conditional Use Permit that a project be found specifically compatible with the COSE before it can be approved. Rather, Title 22 Section 22.62.060(C)(4)(a) only requires a finding that the project is consistent with the Land Use Element of the General Plan. The Las Pilitas Quarry Project is consistent with the Land Use Element. (*See Sections 1(a)-i, 2(b) and 4(a) of the Detailed Response.*)

Fact: There is no established or identified scenic view corridor on Highway 58, nor does staff take into account the already existing Santa Margarita Quarry visual impacts to the immediate area. (*See Sections 1(a)-ii, 2(b) and 4(a) of the Detailed Response.*)

Fact: Staff's allegations of health and safety concerns for the community of Santa Margarita are completely at odds with the conclusions in the EIR on these topics, and are not supported by any other evidence in the record. (*See Sections 2(b) and 3(b) of the Detailed Response.*)

Staff Finding 1(b) states the project is inconsistent with certain COSE mineral resources goals. Staff feels the need for the project would not outweigh its visual and environmental impacts.

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Fact: The State of California estimates that San Luis Obispo County will run out of aggregate by the year 2026 if new reserves aren't permitted. Even with the proposed Santa Margarita Quarry expansion-- assuming it gets County approval-- the aggregate shortfall is still expected to be more than 150 million tons over the next 50 years. There are no other proposed aggregate projects in SLO or Santa Barbara Counties. *(See Section 1(b) of the Detailed Response).*

Fact: Again, there is no requirement in the findings for a Conditional Use Permit that a project be found compatible with the COSE before it can be approved, only the Land Use Element.

Staff Findings 1(c), 2(a), 3(a) and 4(b) state the project is inconsistent with the Noise Ordinance due to truck noise, operational noise, and blasting.

Fact: Staff disagrees with their own EIR, which states that project truck traffic would cause a noise increase of just 1.9 dBA, which it considers "not substantial". The EIR notes that increases below 4 dBA are usually not considered substantial. *(See Sections 1(c)-i, 2(a), 3(a) and 4(b) of the Detailed Response.)*

Fact: Noise levels attributed to project truck traffic would be below the County's threshold of significance of 60dBA, except for two locations where the noise level already exceeds that level. The increases would only be 0.7 and 1.9 dBA at those locations. *(See Sections 1(c)-i, 2(a), 3(a) and 4(b) of the Detailed Response.)*

Fact: The County's threshold for operational noise *could* be exceeded by 1.7 to 2.9 dBA at the two nearest residences, but only during the first two phases of quarry operations. Noise studies clearly document that a 3dBA increase in sound level is generally not noticeable to the human ear. In addition, the EIR notes that there are several mitigation measures available that could reduce operational noise by 5-7 dBA, bringing the project back into compliance with the Noise Ordinance. *(See Sections 1(c)-ii, 2(a), 3(a) and 4(b) of the Detailed Response.)*

Fact: The EIR's conclusions about blasting and vibrations do not support staff's Denial Finding 1.c. Blasting would only occur about 20 times a year, or less than twice per month, for less than 2 seconds. This means that blasting noises would be heard for less than 40 seconds out of the entire year. Blasting will be monitored to ensure that acceptable noise levels aren't exceeded. The EIR also notes that ground vibrations from project operations and blasting will not be significant. *(See Section 1(c)-iii of the Detailed Response.)*

Staff Finding 1(d) states that denial of the proposed project would not preclude or set precedence for future mining projects within the EX1 combining designation area.

Fact: Denial of the proposed project absolutely would preclude and set precedence for any future mining projects within the EX1 combining designation area. Looking at the State's Geologic maps, it is difficult to imagine another quarry proposal in SLO County that would be as close to the market and Highway 101, while impacting as few immediate neighbors as the proposed quarry. If neighborhood objections and truck traffic are legitimate reasons to deny a quarry in the EX1 zone, that sets a dangerous precedent for other applications, as every mine will have these issues to some degree. In other words, if this quarry cannot be approved, it's likely no new quarries can be approved in this County. *(See Section 1(d) of the attached Detailed Response.)*

Staff Findings 3(b) and 5(a) state the project will be detrimental to the health, safety, and /or welfare of the general public and/or persons residing and/or working in the neighborhood of the project, and/or be detrimental and/or injurious to property and/or improvements in the vicinity of the project.

Fact: The EIR studied pedestrian movements across El Camino Real at Encina Avenue and found that the potential effects of the project related traffic were nominal and “mitigable through improvements that will increase pedestrian safety.” (See Sections 3(b)-i and 5(a) of the Detailed Response.)

Fact: Denial Finding 3.b refers to the “vertical curve” on Estrada Avenue (SR 58) near the elementary school crossing, saying it obscures driver views of the crossing, as well as alluding to general safety concerns for school children along the haul route. However, the EIR concluded that “the potential interference with visibility at the school crossing is considered a less than significant impact,” because trucks can see the crosswalk from 350 feet away, and required no mitigation. (See Sections 3(b)-ii, 5(a) and 5(b) of the Detailed Response.)

Fact: Denial Finding 3.b also lists incompatibility with bicyclists on SR 58 as one of the reasons for denying the project. However, the EIR studied the impact of truck traffic on bicyclists, and concluded that the impact was less than significant. (See Section 3(b)-iii of the Detailed Response.)

Staff Finding 3(c) alludes to public concerns about truck emissions through the town of Santa Margarita.

Fact: The EIR studied this exact issue, and found it insignificant. Unsubstantiated “public concerns” are not a valid basis for a project denial. The APCD found that all air-related impacts of the project were either less than significant, or could be mitigated to acceptable levels. (See Section 3(c) of the Detailed Response.)

Staff Finding 4(c) states that truck traffic generated from the proposed quarry will pass through the residential neighborhood along Estrada Avenue and through downtown Santa Margarita along SR 58, which would compromise the small town, rural character of the community.

Fact: Staff seems to be objecting to the location of SR 58, not the project itself. Santa Margarita is a “trucking town”; the Santa Margarita Quarry has been operating just outside of town for nearly a century and has a permit to run as many as 588 truck trips per day through downtown. Caltrans estimates that, on average, 447 trucks per day pass through Santa Margarita. (See Section 3(c) of the Detailed Response.)

Fact: The EIR states: “Currently, large trucks regularly travel through the downtown center of Santa Margarita.... Large truck traffic along this stretch is common, due to the existence of a local trucking company and a truck repair operation, as well as trucks servicing the nearby Hanson quarry and other businesses.” It also concludes “The overall percentage of heavy truck traffic on SR 58 and area roadways is expected to remain in the existing three percent range.” There will be no significant increase in truck traffic as a result of this project, just a redistribution of existing traffic. (See Section 3(c) of the Detailed Response.)

Fact: The EIR also noted that: “Truck traffic will occur only on SR 58, a state-owned and maintained highway. As such, the County has no authority to limit truck trips on this route.” (See Section 3(c) of the Detailed Response.)

Staff Finding 5(b) states the proposed project would create significant and unavoidable impacts to transportation due to uncertainty regarding the timing of installation of needed traffic improvements.

Fact: The EIR studied the traffic volumes, safety, and levels of service in detail and found that the project would not have any significant impact on current traffic or levels of service, even using implausibly high truck trip numbers. Any contributions to *future* 2030 traffic congestion, which would occur even without the project, could be fixed with the installation of a traffic signal, which the quarry would help pay for. The possibility that there may be delays installing the signal, outside of the quarry's control, is not a legitimate basis for denying the project, particularly when the quarry has agreed to pay its fair share. *(See Section 5(b) of the Detailed Response.)*

Staff Finding 6 states that the Environmental Coordinator has found that there is evidence that the project may have a significant effect on the environment, which is a reason for denying the project.

Fact: This Denial Finding states, in sum, that the Final EIR for the project has provides evidence to deny the project. As detailed above, however, most of the Denial Findings are directly at odds with, or misstate, what is in the EIR and the record. *(See Section 6 of the Detailed Response.)*

Staff Finding 7 states there are insufficient specific, overriding economic, legal, social, technological, or other benefits of the project that outweigh the significant effects on the environment.

Fact: This Denial Finding does not list or even consider the economic, legal, social, technological, or other benefits of the project; it simply assumes that they are not enough to overcome the Class I impacts of the project. As discussed above, many of the "impacts" are simply misstated by staff, and others can be mitigated or addressed via Conditions of Approval. *(See Section 7 of the Detailed Response.)*

Fact: As set forth in the State's study, the need for additional aggregate in this County is approaching critical levels. Unless new sources are permitted, the current supply is expected to run out by or before 2026. The State Mining & Geology Board recently designated the project's granite deposit as one of Regional Significance, meaning it is expected to play a significant role in maintaining and developing local infrastructure over the next 50 years. It also means that local governments must consider the regional importance of the rock before denying a project. *(See Section 7 of the Detailed Response.)*

Fact: The project can improve greenhouse gas emissions by reducing the need to import aggregate from outside of the County. Studies show that adding a new quarry to a market can have a huge impact on reducing greenhouse gas emissions. Having a reliable supply of local aggregate is vital to achieving the environmental goals of both AB 32 and SB 375. *(See Attachment K of the Detailed Response.)*

Fact: The addition of another quarry in North County will foster competition and keep prices low for public works projects. It will also reduce the need to import aggregate from outside the area when certain products aren't available at the other two quarries. All of this will save money for taxpayers and help local road maintenance budgets. *(See Section 7 of the Detailed Response.)*

Fact: The project will create jobs, will contribute toward pedestrian safety improvements on SR 58, and will provide the local school district with an annual donation to fund the cost of a crossing guard, which will make the local streets safer for children. *(See Section 7 of the Detailed Response.)*

In sum, approving the Las Pilitas Resources Quarry will have widespread benefits for the County as a whole. For more detail and citations for each of these facts, please review the attached letter and exhibits, and feel free to contact Ken Johnston, Project Manager, with any questions at 610-7186.

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April 27, 2015

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San Luis Obispo County Board of Supervisors
County Government Center Room D-430
San Luis Obispo, CA 93408

**RE: Oster/Las Pilitas/Hwy. 58 Quarry Conditional Use Permit and Reclamation Plan
(DRC2009-00025) Board of Supervisors May 12, 2015 Appeal Hearing**

Margarita Proud is a non-profit community organization that represents a diverse group of San Luis Obispo county residents committed to the safety, livability and character of Santa Margarita, CA and surrounding areas. We support responsible planning principles that result in economic and aesthetic well being for the entire community. Accordingly, we join the planning staff and the Planning Commission in opposing this large scale industrial project because it would significantly impact the surrounding area and unnecessarily disrupt the community of Santa Margarita.

As the hearing date for the applicant's appeal of the Planning Commission's decision to deny this project approaches, we believe our prior submittals, as well as those from other members of the public, pointing out the many deficiencies of the application and justifications for denial remain apposite. Accordingly, we reiterate our counsel's previous request that ALL correspondence received during the Planning Commission hearings be brought forward to the Board of Supervisors and placed into the appeal record.

The Las Pilitas Resources, LLC proposal for a hard rock quarry is not supported by the constraints of the specific site, its surroundings, or adequate public infrastructure. We urge you to support the mission of the Department of Planning and Building to promote the wise use of land

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and to build great communities by upholding the well informed decision of the Planning Commission for DENIAL of this poorly planned, poorly located, and unnecessary project. We additionally request that your board not certify the Environmental Impact Report (EIR).

The Project applicant has been dismissive of the significant impacts the Project would create, instead insisting that the project site is “zoned for mining”, and a pre-established entitlement to mine and create impacts off site exists. This letter reviews several flaws in that position.

Process, Conditional Use Permit (CUP), Environmental Impact Report (EIR)

- The purpose of a discretionary CUP is to evaluate site suitability, compatibility with surrounding uses, and consistency with adopted planning principles on a project by project basis.
- A CUP is not a guaranteed entitlement. This was well communicated to the applicant early in the process. [Link](#) to letter from Dept. of Planning and Building to Las Pilitas Resources, LLC.
- Planning staff (research staff to decision makers) oversaw CEQA review and used the Final EIR and adopted planning principles to inform a neutral, objective analysis.
- Staff analysis determined Project is not consistent with the General Plan, the Findings of Fact necessary to approve a CUP cannot be made, and that there are insufficient economic, social, technological, or other benefits of the project to override its significant unavoidable environmental impacts.
- A CUP goes with the land, not individuals. The Planning Commission recognized that extensive testimony on the purported good character of the present applicants was not relevant to the decision that was before them.

Project Proponent Claims: *“Planning Commission erred by not considering the importance of this aggregate resource to the region as a whole as required by state law, as well as other considerations that are specific to mineral resources and which alter the balance of the traditional Conditional Use Permit findings for projects such as this.”*

- In its presentation to the Planning Commission, Staff demonstrated that no critical shortage of aggregate exists when all available information is considered.¹ This component was considered in great detail at the Planning Commission hearings and will be discussed in greater detail below.
- Mining is an “allowable use” within the Rural Lands (RL), Residential Rural (RR), and Agriculture (AG) Land Use Categories subject to a discretionary Conditional Use Permit (CUP), Reclamation Plan, and environmental review as required by CEQA. The fact that mining may be an allowable use, or the presence of a mineral resource on a site, does not

¹ [link to Staff PP slide from Planning Commission Hearing](#) (slide 08 of 16 that were presented)

alter, or diminish the County's responsibility (as suggested by the applicant) to make the Findings of Fact necessary to approve a Conditional Use Permit.

- Additionally, planning staff and the Planning Commission made clear that denial of this project does not constitute approval of any land use that may be incompatible with mineral extraction and does not otherwise threaten the potential for future extraction in any currently classified or future designated area within the County.

Project Proponent Claims: *"The Las Pilitas Resources Quarry is also being proposed within a special combining designation that specifically allows for quarries."* and argue that it is therefore entitled to special consideration.

EX-1 Combining Designation creates no special privilege or entitlement for a mining project located within the overlay.

The Planning Commission agreed with the Staff's analysis that the Project is incompatible with the neighborhood surrounding the Project site and the community of Santa Margarita. The Project Proponent's response is that the existence of the EX-1 Combining Designation provides a mining applicant special protections that essentially exempt their Project from compatibility between uses. The applicant goes so far as to claim that rather than considering the compatibility of their proposal to the existing surrounding uses, existing surrounding uses should instead be considered incompatible (presumably retroactively) with the proposed project. The applicant's argument must be rejected for the following reasons:

- The sole purpose of the EX-1 Overlay (combining designation) is to identify areas that have been *"classified as containing or being highly likely to contain significant mineral deposits"*.
- Being located within an EX-1 Combining Designation is not a pre-requisite to qualify Mines/Quarries as an "allowable use" within specific land use categories (Table 2-2 LUO).
- A combining designation is applied in addition to a particular land use category, not in place of it.
- Ministerial entitlements allow homes to be built on parcels within the land use category Residential Rural, regardless of the presence of an EX-1 combining designation. The majority of residences the project would impact were already in place prior to a combining designation being in place, but more importantly, decisions that created the ministerial entitlements that exist today were in place long before Classification took place in 1991.
- The presence of a combining designation does not eliminate the need to obtain a CUP and consequently does not express or imply that existing uses are to be ignored, overridden, or discarded.

The Project Proponent argues that the proposed mine is presumptively appropriate at the proposed location because mining is an allowable use and the area contains significant mineral resources. This argument is deeply flawed because:

- The EX-1 overlay incorporated the mapping provided by the California Geological Survey (CGS) identifying the presence of a mineral resource. The CGS did not consider, let alone conclude, that mineral extraction would be appropriate throughout the entire EX-1 combining designation.
- The County's adoption of the EX-1 Combining Designation by Negative Declaration did not include a determination on the environmental impacts of any specific sites within the area.
- The Negative Declaration only determined that the act of adopting the Combining Designation did not appear to create significant impacts. This is understandable because the adoption of the EX-1 overlay did not include consideration of the impacts of a mine or quarry at any particular location. The County reasonably assumed that any particular mining project would be subject to environmental review and adequately reviewed for any future Project. At the time of the adoption of the EX-1 overlay, no specific Project existed as no CUP application was pending.
- For this specific Project, it has been objectively determined that land use incompatibilities exist and the required findings to approve or conditionally approve a Conditional Use Permit (CUP) cannot be made. The presence of a mineral resource does not alter that determination.

San Luis Obispo County Ordinance 2498, adopted by Board of Supervisors Resolution 98-218 (April 16, 1991) does not support placing industrial land uses so close to the many existing residential uses surrounding this proposal or the request for a waiver to eliminate screening material stockpiles from view.

- The Ordinance, by its own terms, was intended to promote the development of mineral deposits *"provided that a high level of environmental quality is also preserved and protected through the discretionary approval process."* The Ordinance therefore does not support the development of a mine that substantially degrades environmental quality.
- Further, the Ordinance identifies the following General Objectives:

3. Extraction operations may be established in areas designated as Scenic and Sensitive lands in the adopted Open Space Plan only when the need for a particular resource or facility location is determined by the Board of Supervisors to outweigh the value of the scenic and sensitive land resource. Scenic and Sensitive lands may be subject to extraction operations or energy facility development only when no feasible alternative sites are available.

4. Evaluation of proposed extraction operations in areas having open space, scenic, habitat, recreational, or agricultural value shall balance those values against the need for extracting mineral resources from such sites.

5. Extraction operations shall provide and be provided with adequate buffering and screening from adjacent land uses.

7. Extraction site access routes shall not create nuisances, hazards or road maintenance problems for adjacent properties.

The Ordinance therefore does not establish an unqualified overriding right to extract mineral resources. Even where mineral extraction is an allowable use, and the presence of mineral resources has been established, the need for minerals must be balanced against the harm to the environment and open space resources. Accordingly, denial of the proposed Project would be appropriate because there is no demonstrable need for the proposed minerals and the Project will adversely affect scenic resources and an established residential community.²

The State Mining and Geology Board's (SMGB)'s process for Classification-Designation of Mineral Resources does not trump CEQA or diminish the County's planning authority.

In an effort to address mineral resource conservation, the State Mining and Reclamation Act (SMARA) mandates a two-phase process known as classification-designation. A comprehensive overview of the classification-designation process is outlined within the State Mining and Geology Board's (SMGB) document titled Classification-Designation Guidelines.³

- Classification identifies and maps lands containing mineral resources. The existence of the EX-1 combining designation is the County of San Luis Obispo's incorporation of Classification into its General Plan, a non-discretionary action mandated by state law.
- Designation follows Classification. Designation is the formal recognition by the SMGB of areas containing mineral deposits of regional significance.
- Designation has recently been approved and is in the process of being finalized for the San Luis Obispo-Santa Barbara Production-Consumption(PC) Region.

The Applicant continues to argue that because the project site is within the area of SMGB's designation of mineral lands, the County's authority has limited or diminished authority to deny the Project. But as the following SMGB's response to comments submitted to SMGB regarding classification-designation explains, even if the designation process was final, designation does not override the local lead agency's duty or authority to evaluate individual mining applications on a project by project basis, and deny any particular project when it deems that action appropriate:

"The designation of mineral lands by the SMGB pursuant to SMARA is based on the location of mineral resources determined to be of regional significance, and once designated will be

² Margarita Proud DEIR Comments, Figure MP4.14-2. pg. 4.8-12 http://margaritaproud.com/documents/86_2813293194.pdf

³ <http://www.consrv.ca.gov/smgb/Guidelines/Documents/ClassDesig.pdf>

*incorporated in the lead agency's General Plan. The lead agency ultimately determines whether it will grant a permit for mining or other proposed end use. Pursuant to Public Resources Code Section 2774.2(A), the SMGB cannot exercise permitting authority on behalf of a lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining, including residential. These considerations are addressed by the lead agency as part of future land use decision considerations."*⁴

The classification-designation process is but one of the many long range planning tools intended to be considered; it provides no exemption from the requirements of a CUP. While the applicant may disingenuously assert that the SMGB's currently incomplete designation process limits the County's land use decision-making authority currently being considered, the SMGB clearly states otherwise;

*"The Lead Agency (i.e. County) ultimately determines whether it will grant a permit for mining or other proposed land use within designated areas. Pursuant to §2774.2(A), the SMGB cannot exercise permitting authority on issues pertaining to air, traffic, noise, and buffer zones or setbacks; such authority resides with the County."*⁵

It is instructive to note that the SMGB clearly recognizes that not all sites within a designated area will be appropriate for siting a mine:

*"To avoid dictating to local communities where future aggregate mines should be located, mineral designated areas generally contain resources (un-permitted deposits) that are far in excess of the regions 50-year demand". This attempts to provide maximum flexibility to local governments in making land use decisions, while still conserving an adequate amount of construction aggregate for the future."*⁶

Denial of a quarry proposal, even within Classified or Designated area, or any other, is an appropriate decision if the Project is inconsistent with the general plan or other local land use regulations, when the project's adverse environmental impacts outweigh its benefits, or where the Project is incompatible with existing surroundings.

The applicants claims that; *"the need for these mineral resources far outweighs the other values that the site might possess"* and that *"the need for the Las Pilitas Resources project is critical, from a supply and demand standpoint"* are not supported by the evidence in the record.

⁴ Executive Officer's Report , August 8, 2014 Agenda Item 8, State Mining and Geology Board (pgs 24, 27, 29, and 37 of 43)

⁵ State Mining and Geology Board (SMBG) Responses to Submitted Comments

⁶ Reports of the State Mining and Geology Board (SMGB), Designation Reports

Aggregate Supply and Demand

Despite the presence of two large sand and gravel mines in Northern San Luis Obispo County, the Project Applicant disingenuously claims there is a “critical” need for additional local aggregate. As justification for this false claim, the Applicant selectively quotes from a 2011 Report entitled California Geological Survey’s Update of Mineral Land Classification: Concrete Aggregate in the San Luis Obispo-Santa Barbara (SLO-SB) Production-Consumption (P-C) Region, California, Special Report-215 (SR-215). SR-215, which updated its 1989 predecessor, SR-162. SR-215 projects the need for additional aggregate for the entire P-C region for the next 50 years by identifying only the amount of existing **permitted** aggregate reserves. Margarita Proud has addressed this subject in a white paper entitled Supply and Demand-Aggregate Resources SLO-SB Counties that has been entered into the record.⁷ The following is a brief summary of the contents of that document:

- The amount of available aggregate is not accurately represented by considering ONLY permitted “reserves”. Both currently permitted “reserves” and proven resources, especially those already earmarked within an approved Specific Plan, would need to be considered in tandem to accurately represent the total reservoir of available aggregate resources that exist in the region.
- Resources identified within approved Specific Plans are similar to what some other counties refer to as Aggregate or Mineral Management Plans. Accurately accounting for resources identified through prior planning actions is fundamental to achieving the stated goal of SR-215 to fulfill future aggregate needs while minimizing the substantial impacts open pit mining creates.
- The focus of SR-215 is on the need for Portland Cement Concrete-Grade Aggregate yet the proposed Project will not produce concrete grade aggregate due to no wet processing of aggregate.⁸ Consequently, the Project would make no contribution toward meeting the projected need for concrete grade aggregate over the next 50 years identified by SR-215.
- Lower than projected aggregate production during the economic downturn has extended the lifespan of all currently permitted aggregate resources, further diminishing the need for low-grade aggregate in the foreseeable future.
- Likewise, the Project applicants’ statement to the Planning Commission that “*the industry average for quarries is extraction rates of 40-60%*” and “*our project will simply redistribute the traffic pattern of trucks in our community*” further undermines their argument that there is an urgent need for additional local sources of aggregate.
- Aggregate resources in the San Luis Obispo and Santa Barbara Production/Consumption Region are plentiful and are recognized by the respective lead agencies. Given the proximity of two established mining operations in close proximity to the proposed Project (Hanson and Rocky Canyon), there is no demonstrable need for a new aggregate mine. Differentiating

⁷ http://www.margaritaproud.com/documents_131_122985755.pdf

⁸ Oster/Las Pilitas FEIR, Project Description and Project Objectives

between resources that have only been classified and proven resources already earmarked for future mining within existing quarries and Specific Plans helps better inform wise, facts-based planning decisions.

- Fortunately, our region is blessed with rich aggregate resources that are already actively mined and the County is in no crisis and approval of Projects that are incompatible with, and detrimental to, existing communities is unnecessary.⁹
- Citing a serious aggregate shortfall, when none actually exists, does not constitute a valid justification of an overriding consideration that the overreaching societal value might outweigh the significant impacts associated with this specific project proposal.

The applicant points out that SMARA requires that *“local governments must notify the CGS and SMGB prior to approving any land uses that would threaten the potential to extract mineral resources in a classified area”*.

This argument is irrelevant to the circumstances of this proposal because the County is not evaluating any project that would threaten the potential to extract mineral resources. The proposed Project does not threaten the potential for extracting resources. The existing community, including the community of Santa Margarita, is not a proposed use; it is an existing use.

Specific Plans

SR-215 is misleading because it does not acknowledge the significant amounts of proven aggregate resources already identified within approved Specific Plans, despite generally acknowledging the significant role of Specific Plans in predicting any unmet future needs for aggregate:

SPECIFIC PLANS IN THE SAN LUIS OBISPO-SANTA BARBARA P-C REGION

San Luis Obispo and Santa Barbara counties have taken an important step in their planning process that is intended to ensure future access to a large part of their concrete-grade aggregate resources. Both counties have adopted Specific Plans designed to serve as the primary land use and regulatory guides for mining and reclamation in the Plan areas. The overall goals these plans are to provide for the long term production and conservation of aggregate resources in a manner compatible with existing surrounding land use, while minimizing adverse impacts to the environment. A 12 mile section of the Santa Maria and Sisquoc rivers is covered by a Specific Plan (Santa Barbara County, 1997; and San Luis Obispo County, 1998) adopted by both counties, and the Rocky Canyon Quarry area is included in a Specific Plan (San Luis Obispo County, 1998) adopted by San Luis Obispo County.

The plans set forth goals, objectives, and policies for resource utilization and protection, and environmental protection, as well as operation, reclamation, and monitoring criteria. All actions taken by the regulatory agencies involving plan review and approval for mining and reclamation within the

⁹ [Planning Dept slide](#) (Aggregate resources) presented at Planning Commission Hearing

*Plan area must be consistent with these Plans. These Specific Plans represent significant additions to the mineral management policies of the two counties, as they include parts of the two largest PCC-grade aggregate resource areas in the P-C Region.*¹⁰

Importation of Aggregate into the San Luis Obispo-Santa Barbara Production-Consumption Region.

Given that existing nearby local sources of aggregate (Hanson Santa Margarita and Rocky Canyon) are operating at far less than capacity, the need for low grade aggregate is not the market force driving the small amount of material being imported into the P-C Region. Instead, evidence suggests that importation is due to reasons that are not related, or able to be solved by the proposed Project:

- The Project would not remedy this situation. As previously stated, a third quarry within the same mineral deposit will not produce any product not already able to be produced locally and, in this case, due to the absence of washing (wet processing), the production capabilities are much more limited and would not contribute to any future need for concrete-grade aggregate.
- A small volume of aggregate to meet chip seal specifications appears to be imported from outside of the P-C Region (Coalinga, Aromas). Demand for specialty material that meets contract specifications may not provide an economic benefit great enough to produce in large quantities. Material needed to meet chip seal specifications could be produced at the two already existing quarries in the La Panza Granitic area if sufficient market demand to ensure profitability existed. Additionally, this product appears to be most efficiently manufactured utilizing wet processing. The proposed Project would therefore be unable to efficiently produce this product because the application does not include the washing of aggregate.
- In some cases, aggregate is imported into the region from sources that are geographically closer to where the aggregate is needed. Because the boundaries of the production-consumption region are artificial, sourcing aggregate from outside the artificial P-C region is, in certain locations, geographically closer and therefore less costly and most sensible. For example, as was cited in SR-162 (the predecessor to SR-215), aggregate from Ventura P-C Region is imported into Santa Barbara and Carpinteria because it's closer than sources within the boundaries, such as Santa Maria.
- Also, some quarries located outside of our P-C Region have affiliations with sub-contractors that do municipal and other work in San Luis Obispo County or are associated with vertically integrated corporations.

¹⁰ CGS, SR-215 (2011), pg. 22

The Project proponent's claim that "*The Las Pilitas Resources Quarry is also needed to foster local price competition and product diversity*" is misleading and unsubstantiated:

- When regional costs of aggregate are compared, prices within San Luis Obispo County are placed into perspective.¹¹ According to the data compiled by planning staff, the price of aggregate in San Luis Obispo County is comparable to that of other areas. It is therefore not reasonable to conclude that the price of aggregate is currently high in San Luis Obispo County or that an additional source of low grade aggregate would further reduce the price of aggregate.
- There is no evidence to support the Applicant's implicit argument that the purported lack of competition has artificially increased the price of aggregate in our region. No specific Project guarantees, or for that matter preliminary estimates, exist suggesting this Project would affect the already fairly low market price of aggregate locally.
- The project Proponent's claim of market inelasticity contradicts their claims of a critical supply shortage.
- Because this Project proposes no washing of aggregate, product diversity would be much more limited than what is currently produced within the same granitic deposit in the much more suitably located existing quarry operations (Hanson Santa Margarita and Rocky Canyon).

Visual/Aesthetic Impacts

The Project proponent downplays visual impacts. New evidence, however, reveals that if anything, the visual impacts have been understated.

- In December of 2014, the Fire Safe Council completed large scale mastication work on the two parcels associated with this project proposal (070-141-070 and 070-141-071).
- In early 2015, significant grading NOT associated with the Fire Safe Council mastication work occurred.
- This recent grading outlines the boundaries of the proposed project. (see image below)

¹¹ [Planning Dept. slide \(Average Cost of Aggregate\)](#) presented @ Planning Commission Hearing



- The recently graded lines demonstrate that because the mountaintop proposed for removal is 200 feet higher than the mountaintop at the existing Santa Margarita Quarry, the visual impacts are substantially greater than Hanson's existing operation.
- Whereas operations at the existing Santa Margarita Quarry are visible from one small section on Hwy. 58, the recent grading on the site of this proposed project is visible not only from Hwy. 58 but from El Camino Real and Hwy. 101 as well. From Hwy. 58, a rural "arterial" route, all eastbound travelers point directly towards it and are additionally impacted by the constrained entrance where they would directly interact with ingress and egress of quarry related traffic.
- It is important to note that the significant visual impacts caused by this Project are impossible to screen from public view due to the elevation of the Project in relationship to its surroundings.
- Additionally, the visual analysis does not consider the industrialization associated with creating a new and entirely different haul route as the rendering below illustrates. This is a separate grounds for denial because it impacts a visually sensitive open space resource.
- Finally, aerial views and site visits to other quarries in and out of the area reveal an additional visual impact. A grey cloud like blanket of granite dust that tends to hover over open-pit mining operations, in addition to the air quality considerations, imparts decidedly industrial imagery.



Figure MP 4.1-8 (Margarita Proud June 5, 2013 DEIR Visual Resources Comments, pg. 4.1-5)

Location

The Project Proponent's argument that the Project will result in comparably similar impacts to the other area mines must be rejected. Some of the key differences between the proposed Project and Hanson Santa Margarita and Rocky Canyon are listed below:

- Site size
- Access and Project truck staging
- Visibility from public roadways
- Adequate public and private infrastructure
- Safety of associated haul routes for all users
- Surrounding existing land uses

A comparison of surrounding land uses at the other quarries existing in the region was submitted into the record at the Planning Commission hearing. This comparison helps illustrate differences and the incompatibilities with existing surrounding uses at the proposed Oster/Las Pilitas site.¹²

The project Proponent's claim that; *"It is worth noting that the nearby Santa Margarita Quarry has been utilizing blasting for years without any harmful effects on nearby land uses or*

¹² http://margaritaproud.com/documents_145_1952284144.pdf

residents” is unsubstantiated and intended to direct focus away from the deficiencies of this specific proposal:

- No evidence has been provided that blasting from Hanson’s operations does not create harmful effects.
- As discussed above, the Hanson Santa Margarita plant is not similar to this proposal in that it is not closely surrounded by residences.
- Evidence in the record shows the nearest residence to the proposed Project is only a few hundred yards away and that impacts associated with blasting are not negligible at numerous homes within the surrounding Residential Rural areas as the applicant suggests.
- The coastal branch of the California Aqueduct is also within very close proximity to areas where blasting proposed by this Project would occur.

Each potential mining proposal has specific characteristics unique to that location. In large part, it is for this reason the discretionary Conditional Use Permit process evaluates proposals on an individual Project by Project basis. The applicant instead is suggesting that their mining proposal should be considered not on its own merits, but on those of another well established existing operation in a superior location.

Project Trucks

The FEIR states the Project would average 273 truck trips per day. The applicant believes this number is overstated. As we have explained in previous comments and set forth below, the FEIR analysis may understate the full extent of the Project.

- The reasonable worst case scenario defined by CEQA is understated by applying a simple average daily truck trip count over the entire year. A straight line average derived from annual extraction volume divided by 250 working days fails to accurately portray the seasonal nature of mining or the reasonably foreseeable circumstance that during certain periods of the year, at the peak of construction season when demand for aggregate is at its highest, truck counts will be significantly higher.
- The FEIR calculates an average of 198 heavy truck trips per day for the delivery of aggregate, and estimates an additional 75 for delivery of concrete and asphalt material to the site.¹³ The applicant asserts that the 75 trips attributed to “recycling” (a project component sought through a Land Use Ordinance waiver request) is excessive based on the overall project description¹⁴ because the trips will be a portion of the maximum annual production of 500,000 annual tons. If the applicant’s argument is found to be an accurate representation, then $273 - 75 = 198$

¹³ Final EIR Oster/Las Pilitas Quarry Project Description - 2.3.3 Trip Generation and Truck Traffic

¹⁴ Final EIR Oster/Las Pilitas Quarry Project Description - 2.3.1 Overall Description (pg. 2-3)

The Project Proponent additionally claims that trucks will carry 25 tons every trip. The FEIR utilizes a 20.2 ton average per trip, a difference that would amount to 20% fewer trucks. The FEIR's use of a 20.2 average is reasonable as explained here:

- 25 tons assumes a double that is loaded to maximum capacity for each and every trip cycle. The reality is that many of the trucks would be only partially filled because not every order would require maximum load. Some trucks would only utilize single dump trucks. Moreover, most if not all trucks would not fill to the top because to do so would require trucks to be covered to avoid spillage of aggregate on the road. Covering truck beds takes time, slows production, and is not typical. Accordingly, especially during peak production, it is much more likely that full capacity would not be routinely achieved. The 20.2 ton average assumed in the FEIR is the more reasonably foreseeable scenario.
- Even if, for the sake of argument, we were to accept 25 tons as the average carrying capacity and 198 (reduced number from FEIR) as a daily average - $198 \times .80$ (20% reduction) equates to an average daily truck trip count of 158, a number still far too large, and vastly out of scale for the specific site and haul route.

The Project Proponent has also argued that the recently released EIR for the Hanson Santa Margarita Quarry Expansion provides proof that truck numbers are overstated for this Project. This data does not amount to a reasonable worst case scenario as required by CEQA.

- It is not reasonable to accept the proponent's assertion that Hanson's operations render a meaningful conclusion about the impacts of this Project given the absence of similarities between the respective locations, the characteristics of the respective haul routes, and the completely different truck trip distribution patterns.
- The FEIR for the Hanson Santa Margarita Quarry Expansion (DRC2011-00098/00099, ED12-008) used data from a ten year (2003-2012) period of a long existing operation to conclude that average daily round-trip truck trips is 89. 89×2 (1 round trip = 2 truck trips) = 178 average daily truck trips. This time period includes a substantial period during the post 2008 economic downturn when little construction activity was taking place. It is entirely likely that overall construction activity in San Luis Obispo county would increase substantially during the decades long life of the Project.
- The maximum daily truck trips conditioned at the Hanson facility is 294. $294 \text{ daily round trips} \times 2$ (1 round trip = 2 truck trips) = 588 daily truck trips, 35-40% of which would route through the town of Santa Margarita. This condition of approval does, however, reinforce the ongoing point that far more than the calculated daily average will be seen during seasonal periods of high demand.
- It is important to consider the relatively small percentage of the total number of Hanson trucks that route through Santa Margarita in any comparison.
- This Project proposal significantly increases truck traffic through the town of Santa Margarita (by as much as 300%) when all the factors are considered.

Attempting to cite an exact number is a futile exercise that only distracts focus away from the simple and real point - Reducing a large number of heavy truck trips to one that is slightly less large does nothing to address the underlying problem that the number of truck trips generated by this Project is incompatible with the community of Santa Margarita and would significantly affect the health, welfare and safety of its residents.

Putting Truck Trips into Perspective

One recent event illustrating the glaring unsuitability of the proposed haul route can be found in a revision to the Traffic Control Management Plan (TCMP) for the California Valley Solar Ranch (CVSR):

- As copied from the Plan below, a total of 116 truck trips on five separate days triggered suspending gravel hauling operations out of Santa Margarita Quarry due to the Santa Margarita Elementary School and traffic volume in Santa Margarita.
- Your board is being asked to to approve a project that proposes to place 49,500 - 68,250 truck trips annually¹⁵ for the next 28-58 years onto a haul route specifically flagged as problematic at less than 1% of that amount.

Aggregate Deliveries: Aggregate will be delivered to the jobsite on an “as needed” basis to support construction activities and the phased construction of the project. The number of trucks per day may vary according to the volume of aggregate needed.

Hanson Mine, Santa Margarita, CA (SUSPENDED)

*Aggregate was initially being supplied from the Hanson Mine in Santa Margarita. Deliveries began in September, 2011. Empty trucks would originate from Highway 58 East, or other trucks would travel from Volpi Ysabel West (Paso Robles) to Ramada Drive North to Highway 101, south to Highway 58 East, to El Camino Real North to the Hanson Mine. All trucks leaving the Hanson Mine would travel south on El Camino Real to Highway 58 East, to the CVSR jobsite. On five (5) separate dates, a total of 42 trucks delivered aggregate from the Hanson Mine to the CVSR jobsite, making a total of 116 trips (about 3 round trips per truck). **Because of the travel in the vicinity of the school located on H Street in Santa Margarita, and the overall increase to traffic volume in Santa Margarita, use of the Hanson Mine was suspended** in favor of the originally planned Navajo Mine.¹⁶*

¹⁵ 198-273 average daily truck trips x 250 annual working days

¹⁶ pg. 10, TCMP-R004, CVSR TCMP, April 20, 2012 <http://www.slocounty.ca.gov/Assets/PL/SunPower+-+High+Plains+Solar+Ranch/traffic.pdf>

Redistribution of Existing Truck Trips

The Project proponent claims that a new source of aggregate in a market does not create additional demand for aggregate and that a new source of aggregate would only create a redistribution of existing truck traffic. This is dismissive of the increased impacts because it fails to take into account the following factors:



- This Project would create a new and completely different haul route, introducing impacts into areas not currently impacted by heavy trucks associated with existing mining operations in the area. This Project relies on a Ca. Legal Yellow Advisory Route¹⁷ for it's primary haul route. The FEIR estimates that 80% of loaded trucks from the proposed project would travel through Santa Margarita and 90% of loaded trucks would travel through the school zone and RR crossing.¹⁸ Except for occasional delivery to residences east of Santa Margarita, Hanson's trucks do not utilize Hwy. 58,

and only about a third of Hanson trucks travel through Santa Margarita.

- The Project Proponent's discussion regarding redistribution of market share only considers trucks associated with Hanson.
- Rocky Canyon would also be part of any redistribution of market share. None of these trucks currently route through Santa Margarita.
- Finally, it should be noted that at some point in the future, be it by the current applicant or a future owner, the Project could produce aggregate at or near the maximum capacity. Under this circumstance, the total volume of traffic would far exceed the numbers being predicted by the Applicant at this time.
- If the Applicant is confident that its production will always be limited, it should reduce its requested maximum capacity to reflect this expectation. A reduction of truck trips can only be reliably achieved by a greatly reduced maximum capacity.

It is reasonable to conclude that:

- The Project Proponent's redistribution argument contradicts their own claim that a critical shortage of aggregate requiring immediate additional sources of supply exists in the area.
- The inability for the specific site to manage ingress and egress of large trucks cannot be mitigated. The steep and winding entrance road directly adjacent to Hwy. 58 cannot

¹⁷ <http://www.dot.ca.gov/hq/traffops/trucks/truckmap/truckmap-d05.pdf> District 5 truck maps

¹⁸ Realistically, all trucks accessing the proposed Project travel through the school zone and RR crossing. There is no other means of ingress and egress to access this "arterial" route.

adequately accommodate the queueing of 26 trucks as stated in the FEIR and would directly cause random staging events along the haul route and other yet to be disclosed locations.

- Even, if only for the sake of argument, the claim of no net increase in mining related truck traffic (market remains static/no additional demand for aggregate) were to be accepted, this Project would unequivocally, and dramatically, increase the number of truck trips through Santa Margarita associated with mining activity in the area.

Existing Trucking Facility

The applicant writes that “*Mike Cole, one of the Project partners, lives across the street from the Oster property, and for 19 years (until 2011) he had his trucking company based at this house, with a fleet of up to 17 trucks. Accordingly, Mr. Cole knew from firsthand experience that large trucks could safely navigate that stretch of Highway 58 without issue.*” The personal opinion of the applicant is as irrelevant as it is unreliable:

- Truck numbers claimed to be associated with this location have not been substantiated with verifiable evidence and are very likely to be drastically overstated due to the gradual growth of this trucking operation (code enforcement case COD2010-00095 - use not allowed or established without a permit) over a period of many years.
- Mr. Cole’s experiential assessment cannot be considered an impartial perspective given his interest in the outcome of this Project proposal.
- The event outlined above (Hanson Mine Santa Margarita Suspended) suggests the project proponent’s personal assessment likely did not take into account the health, safety and welfare of the surrounding community.
- An unbiased determination of the scale of this former use and objective assessment of the associated impacts does not appear to have been part of any evaluation at this time.
- This property’s driveway is located on a section of the road with minimal incline that has a far better line of sight than the proposed Oster site. Even so, no evidence exists to show that the ingress and egress of this, relatively to the Project, small number of unloaded trucks was not without impacts to travelers in both directions on Hwy. 58.
- Fueling, washing of trucks, sandblasting, painting, and other facility infrastructure remain in place at this location and are still in use, albeit at a lesser total volume than previously.
- Given the absence of any planned infrastructure of this nature at the proposed facility, a valid concern is that this yard could become the de-facto truck staging and maintenance facility for the proposed Project.

Noise

The EIR did not adequately address all Project operation related noise sources. The Project Proponent states that the County grants exemptions from the Noise Ordinance for the “construction” phases of projects and is puzzled why staff did not disclose that here.

- The early phases of the Project would actually be part of the operation as much of this material will be sold and will last for a number of years. The intent of the exemptions is for “construction” (intermittent and short term in nature), not for operations.
- The majority of the long range operational noise sources (i.e. aggregate crushing, processing, stockpiling, truck loading and unloading) will NOT move away from the quarry’s central operational areas and will not be shielded by ridge lines.

Regarding blasting, the applicant states that it is unlikely that the noise or vibration might travel as far as the nearby residences. This is an unsubstantiated statement dismissive of the real world data collected at a Hanson blasting event.

Noise impacts at the project site are understated due to the failure to analyze ingress and egress along the steeply inclined 10% Entrance Road, including the following:

- Jake brakes would be a routine occurrence for a fully loaded double traversing down the steep and winding driveway.
- Fully loaded trucks with incoming asphalt and concrete debris will be climbing the Entrance Road from a full stop.

The Project Applicant’s assertion that the Noise Ordinance exempts traffic on public roadways fails to acknowledge the purpose of the Noise Element. This Project proposal is not an existing use.

The Noise Element is directed at minimizing future noise conflicts, whereas a noise ordinance focuses on resolving existing noise conflicts. A noise ordinance may be used to address noise levels generated by existing industrial, commercial and residential uses which are not regulated by federal or state noise level standards. The regulation of noise sources such as traffic on public roadways, railroad line operations and aircraft in flight is preempted by existing federal and/or state regulations, meaning that such sources generally may not be addressed by a noise ordinance. The Noise Element addresses the prevention of noise conflicts from all of these sources.

County's Authority to Regulate Land Use

The Applicant's claim as **Fact** that “ *the County has no authority to limit truck trips on this route*” (Hwy. 58) fails to address the fact that a request has been made for a discretionary permit. The County's authority and duty is to determine ALL impacts associated with such a request.

- Conditional Use Permit Findings must be made. Land Use Ordinance (Title 22.62.060(C) (4) (e) states the Review Authority shall not approve or conditionally approve a CUP unless it first finds; “*that the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project*”. This language does not provide a modifier to the word ALL, or suggest that only certain roads are to receive consideration.
- Hwy. 58, while technically a “state highway”, is a narrow, windy, sloping road without adequate shoulders that functions as a local rural arterial route never designed for use as an industrial transportation corridor.

As part of the County's authority and responsibility to regulate land use, the discretionary CUPs for both the California Valley Solar Ranch and the Topaz Solar Farm solar projects included COA and Traffic Control and Management Plans that took into account the hazards of project related trucks on Hwy. 58, a Ca. Legal Yellow Advisory Route beginning at J Street in Santa Margarita (PostMile 1.9).¹⁹ The Applicant's claim of “*no authority*” is telling of an overall attitude that remains dismissive of Project impacts, including well proven hazards that exist on Hwy. 58.

- Truck traffic through Santa Margarita was severely restricted as well as on Hwy. 58. This Project would use the same portions of the roadway that were determined to be problematic.
- Conditions were in place during the more than two years²⁰ of construction activity at those facilities.
- Alternate routes were specifically identified along with scheduled convoys and other safety precautions that minimized the traffic and safety related impacts on this “state highway”.²¹

¹⁹ <http://www.dot.ca.gov/hq/traffops/trucks/truckmap/truckmap-d05.pdf> District 5 truck maps

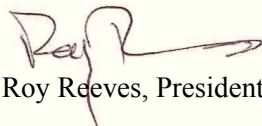
²⁰ If approved, the permit sought by Las Pilitas Resources, LLC would last for up to 58 years.

²¹ California Valley Solar Ranch TCMP <http://www.slocounty.ca.gov/Assets/PL/SunPower+-+High+Plains+Solar+Ranch/traffic.pdf> and Topaz Solar Farm TCMP, Aug. 31, 2012

We encourage your Board to support the continued good work of your planning staff and your Planning Commissioners by upholding the recommendation and decision to deny this poorly located and unnecessary project. Please do not allow the delicate balance to tip away from that of a community with character to one that has irreversibly lost that which makes it unique.

Thank You for the opportunity to provide comments on this important land use decision that will directly have effect on the future livability, safety, and character of our entire community.

Respectfully Submitted,
Margarita Proud Board of Directors



Roy Reeves, President

Attachments: Table of Contents



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February 28, 2015

Via Email

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RE: Appeal of the Planning Commission's denial of the Las Pilitas Quarry

Dear Mr. Fitzroy,

On behalf of Margarita Proud, I submit this letter in opposition to the Project Applicant's appeal of the Planning Commission's denial of the above-referenced project. The Applicant's April 9, 2015 letter to the Planning Director, Jim Bergman, was typically misleading and inaccurate. The Applicant's letter purportedly demonstrates that the Planning Commission's denial of the Project is not based on substantial evidence in the record or is otherwise inconsistent with the law. Contrary to these contentions and as the Planning Staff ably demonstrated in its reports to the Planning Commission, the denial findings are supported by the evidence and consistent with the County regulation and the applicable laws. Moreover, the evidence in the record does not support the findings necessary to approve the project.

The Project must be consistent with aspects of the General Plan, including the COSE

The Applicant argues the Planning Commission erred when it denied the project in part because it is inconsistent with important Visual Resource goals of the Conservation and Open Space Element (COSE). The Applicant claims the Project must be consistent with the Land Use Element (LUE), but not with the COSE. The Applicant's argument ignores the well-settled "consistency doctrine" according to which a discretionary land use decision – such as the approval of a conditional use permit (CUP) for quarry—must be consistent with all elements of the general plan.

All land use decisions must be consistent with the general plan and any specific plan adopted to further the objectives of the general plan, which functions as the "constitution for all future developments." Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 570. ("Citizens of Goleta"). According to the "consistency doctrine", the regulatory controls and development approvals of all cities and counties, including zoning and subdivision approvals,

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must be consistent with the agency's adopted general plan. Longtin's California Land Use, 2nd Ed., at §2.40. "The requirement of consistency is the linchpin of California's land use and development laws. It is the principle which infused the concept of planned growth with the force of law." De Battori v. City of Norco (1985) 171 Cal.App.3d 1204.

The Applicant seems to understand this basic principle, but nevertheless claims consistency with the LUE is all that is required because the LUE strives to achieve consistency among various elements that make up the General Plan, and "complements the other elements by incorporating and implementing their land use concerns and recommendations." Citing, LUE Part I, p. 1-10. The Applicant's argument is inconsistent with California law.

If the Applicant were correct, the County would not be required to consider a project's consistency with the COSE. Conservation of open space and associated resources through the implementation of the COSE, however, is a fundamental policy of the State:

The Legislature expressed the importance of the open space elements in the following terms. "It is the intent of the Legislature in enacting this article: [para.] (a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible. [para.] (b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program." (§ 65562.)

Sierra Club v. Bd. of Supervisors, 126 Cal. App. 3d 698, 704, 179 Cal. Rptr. 261, 264 (1981)

The Sierra Club court established the principle that the conservation and open space element is not sub-ordinate to other elements of the general plan, including the land use elements. The Court set aside Kern County's so-called "precedent clause" according to which, in the event of a conflict between the land use plan and the open space element, the land use element would take precedence because it found that the conservation and open space element was on a par with the land use element.

Accordingly, the Applicant's argument that the Project need not be consistent with the COSE must be rejected. Regardless of whether the County's own land use ordinance requires it, State law provides that all discretionary approvals must be consistent with the General Plan, including the COSE. Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App. 3d 1176, 1184.

The Project is inconsistent with scenic values of the SR 58 corridor

The Applicant contends the project's inconsistency with the scenic values of the project area, particularly the SR 58 corridor should not be a basis for denial. The Applicant's argument is largely based on the false claim that because of historic mining, this corridor should not be considered scenic. This claim ignores the fact that the limited existing mining has not and will

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not likely significantly impact the scenic and rural qualities of this viewshed. Recent grading activity on the project site has demonstrated that the Las Pilitas quarry would significantly degrade the existing scenic quality of this viewshed.

Moreover, the fact that this corridor is not currently designated a scenic highway is not determinative. The County is well within its authority to conclude that this stretch of SR 58 possesses outstanding scenic and rural qualities even if this stretch has yet to be formally designated. Pursuant to COSE Goal MN-1 and the corresponding Policy, the Planning Commission appropriately concluded the project site has outstanding open space and scenic value. This determination was based on substantial evidence and should not be disturbed.

The fact that mining may be an allowable use does not in itself mean the project is consistent with all elements of the General Plan

The Applicant's appeal letter continues to perpetuate the fiction that owing to the existence of the EX-1 overlay, the project site is somehow "zoned for mining." In her January 2015 letter to the Planning Commission, the Applicant's attorney, Sophie Treder, made a similar argument, claiming that SMARA was enacted to "shift the traditional balance in favor quarrying, at least in classified/designated areas, and to protect those areas from future NIMBYism which prevent extraction of the rock."

There is only a shred of truth to Ms. Treder's otherwise false claim. As set forth below, while SMARA requires lead agencies --such as the County-- to consider the potential impact of non-mining project's on mineral resources in designated areas, the main emphasis of the law is on protecting existing mineral resource operations from potentially incompatible future land uses and projects. This concern is irrelevant in the present context because the application is for a mine, not for a project that could affect present or future mineral extraction.

Contrary to the Applicant's claim, SMARA does not contain any specific requirements or suggestions that proposed new mining projects must be approved even where, as here, the operation of the mine would cause significant disruption of existing communities such as Santa Margarita and threatens the public's health and safety. Contrary to the Applicant's contention, there is no public policy preferring new mines to existing communities. California law leaves the discretion to strike a balance between mineral extraction and health and welfare of citizens to the Cities and counties.

The mere fact that the project is within an area that contains mineral resources does not mean the County should value a new mine above an existing community. As explained above, SMARA's mineral designation process, which culminated in the mineral resource overlay (EX-1), is primarily concerned with identification of areas that contain significant mineral resources in order to protect those resources and existing mining operations from future development that could jeopardize. The overlay is descriptive in the sense that it identifies areas that contain resources. It does not mean, however, that the County has determined that mining is an appropriate land use through-out the 7000 acre EX-1 area.

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Cal Pub Resources Code § 2762 provides that

(a) Within 12 months of receiving the mineral information described in Section 2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, a lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan that will:

- (1) Recognize mineral information classified by the State Geologist and transmitted by the board.
- (2) Assist in the management of land use that affects access to areas of statewide and regional significance.
- (3) Emphasize the conservation and development of identified mineral deposits.

Thus, Pub Res Code §2762 asks the County to develop policies recognize the information supplied by the State Geologist regarding the existence of mineral resources, “manage” land uses that could affect access to said resources, and assist in the development of said resources. This law does not require or even encourage the County to approve a mine that is incompatible with an established community.

Consistent with §2762, the County’s Land Use Ordinance (Title 22) explains that

The Extractive Resource Area (EX1) combining designation is used to identify areas of the county which the California Department of Conservation's Division of Mines and Geology has classified as containing or being highly likely to contain significant mineral deposits.

The purpose of this combining designation is to protect existing resource extraction operations from encroachment by incompatible land uses that could hinder resource extraction. In addition, Framework for Planning- Inland Portion, Part I of the Land Use Element contains guidelines which call for proposed land use category amendments to give priority to maintaining land use categories which allow and are compatible with resource extraction. (San Luis Obispo County Code 22.14.050) (Emphasis added.)

§22.14.050 does not purport to designate the entire over 7000 acre area of the EX-1 overlay as a “mining zone” or suggest that the overlay creates anything resembling a mining zone or a right to mine. After evaluating the environmental impacts of each proposed mine pursuant to CEQA, the County must consider its compatibility with the surrounding community. A new mine can be approved if, and only if, the County determines that the mine would be consistent with all applicable code and General Plan policies, as well as adjacent uses, and the project’s benefits outweigh its harm.

COSE Goal 3 requires the County to balance the interest in mineral extraction against the County’s strong interest in protection of “sensitive natural resources” and “existing adjacent

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uses.” Thus, the Applicant’s argument that the County must approve new mineral extraction projects at the expense of the health, welfare and safety of an existing community must be rejected.

Here, the evidence shows the Project is inconsistent with the General Plan and Santa Margarita Design Plan, will have a significant and disruptive impact on the town of Santa Margarita, and its benefits do not outweigh its harms.

There is no evidence or credible argument supporting the Applicant’s contention that there is an unmet need for aggregate in Santa Barbara/Santa Margarita Region

Both the PlanningStaff and the PlanningCommission agree with Margarita Proud’s contention that there is no significant unmet need for aggregate in San Luis Obispo County. Yet, the Applicant continues to insist that there is a “critical” need for more aggregate in this region. The Applicant relies on the 2011 California Geological Special Report-215 (SR-215) to argue that there is a shortfall of 188 million tons of aggregate in the next 50 years. This claim is demonstrably false because the “need” identified in SR-215 is based solely on the amount of aggregate that is subject to approved permits. The record shows, however, that currently permitted “reserves” in addition to proven resources associated with existing operations are more than enough to meet the region’s potential needs. Much of the existing resources have already been considered and evaluated in approved Specific Plans, such as the approved plan for Rocky Canyon. A renewed permit for the operation of the Hanson quarry is currently under review by the County without significant opposition from the public or the agencies. Accordingly, a new mine is not needed to meet any unmet demand for aggregate.

In any event, the proposed Las Pilitas quarry is unable to meet the need for Portland Cement (PC) grade aggregate, which according to SR-215, is the type of aggregate in demand in our region. PC aggregate must be washed, which the Las Pilitas quarry would be unable to do as the project description was revised to eliminate the option of washing of aggregate, essentially precluding this project from producing concrete-grade aggregate.¹ Consequently, the Project would be able to make zero contribution towards meeting the estimated 137 million tons of concrete-grade aggregate the region will use in the next 50 years.

The Project cannot be approved because the required findings cannot be made

The Applicant contends that because the project’s impacts are “small” and the need for aggregate is “great”, the Board should ignore the Planning staff and the Planning Commission’s judgment and grant the appeal. The Applicant’s argument must be rejected because the findings required for project approval cannot be made on this record. Moreover, as set forth above, (1) there is no demonstrable need for the aggregate that would be produced by this mine, and (2) the heavy-truck traffic and noise generated by the project would be detrimental to Santa Margarita residents and incompatible with the community. Accordingly, the balance of equities tips sharply in favor of denying the appeal.

¹ Oster/Las Pilitas FEIR, Project Description and Project Objectives

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To begin with, those of the Applicant's arguments that are strictly based on the EIR's conclusions about the severity of project impacts must largely be rejected because the County has not approved and certified the EIR. The Board is required to consider the EIR's information and analysis (CEQA Guideline §15090(a)(2)), but is not required to accept all of its conclusions. Accordingly, the conclusions of the EIR are not binding on the Board.

The Applicant seems to assume, without any discussion, that the only basis on which the Board may deny the project is a conclusion that the Project will result in one or more significant, unavoidable environmental impacts. This is false. Native Sun/Lyon Comm. v. City of Escondido (1993) 15 Cal.App.4th 892. While the Board can certainly deny the project on the basis of its significant environmental impacts, the Board must deny the project also if it concludes that the project is inconsistent with other laws and regulations. See, Pub. Res. Code §21002.1(c) ("... the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.")

The County could conclude, for example, that the significant number of heavy-trucks the Project would put through the town of Santa Margarita would be significantly disruptive and wholly incompatible with the character of the community. The County could reach this conclusion on the basis of the noise, dust, vibration and traffic generated by the heavy trucks that would drive through the middle of town. Accordingly, despite the EIR's conclusion that project-related traffic would not cause a significant traffic impact by degrading the level of service (LOS), the Board has the discretion to conclude project-traffic would be incompatible with the community and Margarita

To approve the project, the Board must be able to make the following findings:

- c. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and
- d. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and
- e. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.
- f. Any additional findings required by Planningarea standards in Article 9 (Community PlanningStandards), combining designation (Chapter 22.14), or special use (Article 4).

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The facts do not support these findings. The Planning Commission concurred with the Planning Staff's conclusion that finding (c) cannot be made because the noise, dust, vibration and heavy-truck traffic generated by the blasting and other project operations would be detrimental to the health, safety or welfare of the "sensitive receptors" near the project and in the community of Santa Margarita. The Planning Commission also correctly determined that the truck traffic generated by the Project would be fundamentally incompatible and conflict with the community of Santa Margarita and cause significant health concerns. See, Denial Finding 3(a) (b) & (c). It should be noted that the EIR also recognized that the operation of the quarry could result in this kind of conflict and incompatibility.

The Planning Commission also correctly determined that Finding 22.62.060 (C)(4)(e) cannot be made because the traffic generated by the Project is beyond the levels the area roadways can safely handle. In particular, the Planning Commission found that the 35 truck trips per hour (or more) through Santa Margarita poses a safety hazard to pedestrians, including school children who attend the Santa Margarita Elementary School and local residents and tourists who patronize businesses in down-town Santa Margarita.

The Applicant's argument that the County cannot deny the Project on the basis of impacts on SR 58 is without merit

The Applicant rejects the idea that the County could deny the project in part because of the traffic impact on SR58. According to the Applicant's novel theory, the County is entirely powerless to address project impacts on the main road through Santa Margarita because SR 58 is a state highway. The Applicant's theory is inconsistent with CEQA.

Pursuant to Pub Res. Code §21081, before approving a project that has one or more impacts on the environment, the lead agency must make one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

Accordingly, if the County determines that the Project will result in a significant impact on traffic, it cannot approve the Project unless it adopts a statement of over-riding considerations. It

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is immaterial whether the traffic impact occurs on a federal highway, state freeway or County road.

The Planning Commission appropriately concluded that the Project impacts are significant and that mitigation is not feasible because it is uncertain

The Applicant takes issue with the Planning Commission's finding that the Project's significant cumulative impacts on traffic (intersection of Estrada and El Camino in the heart of Santa Margarita) would be unavoidable because mitigation is infeasible. The EIR and the Planning Commission concluded that because of (1) the lack of funding sources, (2) the number of different agencies that must agree on the project design, and (3) the uncertainty associated with the acquisition of a right-of-way, it is not reasonably certain that appropriate mitigation project would ever be implemented.

The Applicant takes issue with this finding, arguing that the County must assume that the necessary improvements will be timely implemented. The Applicant's argument ignores the law, which requires the County not to ignore the reality that funding shortfalls and the complexity associated with projects requiring multi-agency approval are often significantly delayed. CEQA defines feasible as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guideline § 15364. Here, it is reasonable to conclude that the given the complexity of multi-agency decision-making, and the cost and difficulty of obtaining the necessary right-of-way, the required mitigation is infeasible in light of the legal, social and technological obstacles involved. On these facts, the County could not conclude the required mitigation is feasible.

The Applicant contends the County must accept its offer of paying a fair share towards the needed improvements, and presumably consider the project's traffic impact mitigated. It is well-settled, however, that a commitment to pay fees without any evidence that mitigation will actually occur is inadequate. City of Marina v. Bd. of Trs. of Cal. State Univ., (2006) 39 Cal. 4th 341, 365.

The Applicant also claims it would be "unfair" to deny the project because of something that is not the Applicant's "fault." The Applicant clearly does not understand the nature of the County's obligations under CEQA, pursuant to which, the County must deny a project that would result in significant unavoidable impacts unless it concludes the Project's "are acceptable due to overriding concerns as described in Section 15093." Pub Res Code §21081(a)(3); CEQA Guideline §15092(b)(2)(B). Accordingly, "fairness" to the project Applicant is not an issue that the County can properly consider in evaluating whether to approve the project. As the facts here simply do not support an over-ride, the Project must be denied.

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In conclusion, I urge you to deny the appeal and deny the project.

Sincerely,

Babak Naficy
Babak Naficy